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In the Supreme Court of the United States

OCTOBER TERM, 1980

CENTRAL OF GEORGIA RAILROAD COMPANY,
PETITIONER

v.

JAMES E. HENDLEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether a federal district court has jurisdiction to entertain a civil suit filed by a railroad employee seeking injunctive relief from a discharge allegedly imposed in violation of 45 U.S.C. 60, which prohibits an employer from disciplining or attempting to discipline an employee for voluntarily furnishing information regarding another employee's injury or death.

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

This action was brought by respondent James E. Hendley to enjoin his employer, petitioner Central of Georgia Railroad Company, from conducting a disciplinary investigation and from discharging him after he rendered assistance to a fellow employee in connection with a suit against the railroad under the Federal Employers' Liability Act, 45 U.S.C. 51 *et seq.* ("FELA").[1]

Respondent Hendley has been employed by Central of Georgia for 25 years as a switch engine foreman and serves as local chairman of the United Transportation Union (Pet. App. 4a-5a). A fellow employee, Daniel Razook, was injured in 1977 while working on a segment of Central of Georgia's railroad track that runs through the property of Union Camp Corporation (*id.* at 5a). Hendley was not present at the scene of the accident, but Razook nonetheless asked him to help determine the exact physical layout of the tracks where the accident occurred (*ibid.*). Hendley agreed and thereafter conducted Razook and his attorney to the place where the tracks were located (*ibid.*). While they were there, the attorney took photographs of the yard for use in Razook's FELA case (*ibid.*).

Hendley's deposition was taken in connection with Razook's FELA case, but he was not called as a witness (Pet. App. 6a). On December 1, 1977, the day after the FELA action ended, Hendley received a letter charging him with "disloyalty to the Central of Georgia Railroad Company in that [he] accompanied

[1] This Statement is based on the facts set forth in the opinion of the court of appeals (Pet. App. 4a-16a).

and assisted Mr. Billy Moore [Razook's attorney] onto the property of the Union Camp Corporation on an unknown date for the purpose of making photographs of Union Camp Corporation's property for use in a law suit against the Central of Georgia Railroad Company and Union Camp which is in violation of Rule R of the book of operating rules of Southern Railway System" (Pet. App. 6a–7a).[2] The letter also informed Hendley that a formal investigation regarding his conduct would be held on the following day (Br. in Opp. App. B). In addition, Hendley was suspended from service pending the outcome of the investigation (Pet. App. 7a). Hendley then obtained a postponement of the scheduled hearing (*ibid.*).

On December 8, 1977, Hendley filed the present suit in the United States District Court for the Southern District of Georgia seeking to enjoin Central of Georgia from violating 45 U.S.C. 60 by conducting the disciplinary hearing or interfering with his continued employment (Pet. App. 7a).[3] The district court denied

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[2] Rule R of the Southern Railway System's operating rules (Pet. App. 7a n.2) provides:

> Employees must not divulge to any person other than the shipper, consignee or a duly authorized public officer, any information concerning shipments of freight, which information might be used to the disadvantage of the patrons of the railroad.
>
> Information detrimental to the Company's interests must not be divulged except to proper officers or to others authorized to obtain such information.

[3] 45 U.S.C. 60 provides in pertinent part: "Any * * * rule * * * or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever * * * shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or at-

Hendley's request for an injunction, holding that the employer's disciplinary action gave rise to a "minor dispute" within the exclusive jurisdiction of the National Railroad Adjustment Board (Pet. App. 18a-25a).[4] The court stated (Pet. App. 23a) that it had "little doubt that violations of [45 U.S.C. 60] may be enjoined in connection with an on-going FELA case," but ruled that once an FELA suit is concluded the mandatory arbitration remedies provided by the Railway Labor Act ("RLA") are exclusive. Hendley's motion for an injunction pending appeal was denied (Pet. App. 8a).

The disciplinary hearing was conducted on February 15, 1978, and Hendley was dismissed from service (Pet. App. 8a). Hendley then processed his grievance through the arbitration procedures provided under the Railway Labor Act (*ibid.*). The National Railroad Adjustment Board sustained the determination that Hendley had been disloyal, but held that his dismissal was too harsh a penalty (*ibid.*). Accordingly, the Board ordered that Hendley be reinstated with full seniority, but without back pay (*ibid.*).

Following the Board's determination, the court of appeals rendered its decision on Hendley's appeal from the adverse decision of the district court. It held (Pet. App. 15a) that "even after the conclusion of an FELA case * * * a federal district court has jurisdiction to determine whether a disciplinary hearing is brought

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tempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than $1,000 or imprisoned for not more than one year, or by both * * *."

[4]The district court defined a "minor dispute" as one that "generally concerns the meaning or proper interpretation and application of rules or working conditions under the collective bargaining agreement" (Pet. App. 21a). See also note 5, *infra*.

for purposes violative of §60, or whether the railroad is attempting to discipline the employee for a violation of lawful company rules." The court also concluded (*ibid.*) that "[i]t is clear from a review of the testimony before the investigating board that the actions of Hendley which were the subject of the investigation are within the protection of §60." The court added (*id.* at 16a) that "[s]ince Hendley's actions could not lawfully be the subject of disciplinary action and arbitration, any award made by the National Railroad Adjustment Board is null and void." Accordingly, the court reversed and remanded the case to the district court with instructions to set aside the Board's order and award back pay to Hendley for the time he was suspended as a result of the railroad's actions (*ibid.*).

DISCUSSION

The court of appeals correctly held that the Federal Employers' Liability Act provides an exception to the general requirement of the Railway Labor Act that employee discharge controversies be decided through arbitration. In a comprehensive opinion, the court of appeals concluded that federal courts have jurisdiction to enjoin violations of 45 U.S.C. 60, and that exercise of that jurisdiction does not improperly interfere with the arbitration process. Because the court of appeals' decision does not conflict with any decision of this Court or of any other court of appeals, review by this Court is unwarranted.

1. To facilitate the peaceful settlement of labor disputes and insure the continuity of interstate transportation, Congress established a mandatory arbitration procedure to handle minor contractual disputes that cannot be resolved by the parties through negotiations. *Union Pacific R.R.* v. *Price*, 360 U.S. 601, 609 (1959); *Brotherhood of Railroad Trainmen* v. *Chicago*

River & Indiana R.R., 353 U.S. 30, 34 (1957).[5] Ordinarily, the arbitration process is the exclusive method for resolving such disputes, and litigation in the courts is foreclosed except for judicial review of the Adjustment Board's decision. *Andrews* v. *Louisville & Nashville R.R.*, 406 U.S. 320 (1972); *Gunther* v. *San Diego & A. E. Ry.*, 382 U.S. 257, 263 (1965).[6]

This Court has emphasized that the arbitration process was "designed for effective and final decision of grievances which arise daily, principally as matters of the administration and application of the provisions of collective bargaining agreements." *Union Pacific R.R.* v. *Price*, *supra*, 360 U.S. at 616. In general, the arbitration process is mandatory, not optional, and an employee alleging wrongful discharge must resort to that process. See *Andrews* v. *Louisville & Nashville R.R.*, *supra*.

These principles are not controlling, however, in a case such as this, in which the employee seeks to vindicate in federal court "independent statutory rights accorded by Congress." *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 49–50 (1974). Hendley claims in this case that the actions taken against him by his employer violate 45 U.S.C. 60, not the terms of the col-

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[5] Minor disputes "are controversies over the meaning of an existing collective bargaining agreement in a particular fact situation, generally involving only one employee." *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R.R.*, *supra*, 353 U.S. at 33.

[6] A reviewing court may reverse the arbitration board's decision only in limited circumstances:

> (1) failure of the Adjustment Board to comply with the requirements of the Railway Labor Act; (2) failure of the Adjustment Board to conform, or confine itself to matters within the scope of its jurisdiction; and (3) fraud or corruption.

Union Pacific R.R. v. *Sheehan*, 439 U.S. 89, 93 (1978).

lective bargaining agreement. And the "distinctly separate nature of these contractual and statutory rights is not vitiated merely because both [may have been] violated as a result of the same factual occurrence." 415 U.S. at 50. Accordingly, there is no warrant for requiring Hendley to pursue arbitration as an "exclusive" remedy in these circumstances.[7]

2. In our view, the purposes that Congress sought to achieve when it enacted 45 U.S.C. 60 supply convincing evidence that employees threatened with illegal retaliation were intended to have a remedy in federal court. When it enacted this provision in 1939, Congress was aware that many carriers had rules that could be interpreted to authorize the discharge of employees for disloyalty to the company if they disclosed relevant information to FELA plaintiffs. See, *e.g.*, *Amending the Federal Employers' Liability Act: Hearings on S. 1708 Before a Subcomm. of the Senate Comm. on the Judiciary*, 76th Cong., 1st Sess. 39–46, 82–84 (1939). Recognizing "the danger of direct coercion by railroad agents against its employees" (*Kozar* v. *Chesapeake & Ohio Ry.*, 320 F. Supp. 335, 370 n.17 (W.D. Mich. 1970), rev'd in part on other grounds, 449 F.2d 1238 (6th Cir. 1971)), Congress enacted Section 60 to "prohibit[ ] the promulgation or enforcement of rules which penalize railroad employees for giving information concerning accidents to the injured person

[7] This Court has recognized, moreover, that arbitration is not always the employee's exclusive remedy even when his claim may fairly be construed as deriving from the collective bargaining agreement. For instance, an employee has a right to bypass the arbitration process and bring suit in district court when his union is guilty of a breach of the duty of fair representation (*Conley* v. *Gibson*, 355 U.S. 41, 44–45, 47 (1957); *Glover* v. *St. Louis-San Francisco Ry.*, 393 U.S. 324 (1969)), or when the carrier has engaged in racial discrimination (*id.* at 328–329).

or his representative" (S. Rep. No. 661, 76th Cong., 1st Sess. 2 (1939)). Section 60 declares any such rule "void" and prescribes criminal penaltics for anyone who "discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest.* * *."[8]

Although the statute does not expressly authorize civil enforcement, we believe that "Congress intended

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[8]The Senate Committee summarized the background and purpose of Section 60 as follows (S. Rep. No. 661, *supra*, at 5):

> The railroads maintain well-organized and highly efficient claim departments. When an employee is injured, the claim agent promptly endeavors to procure statements from all witnesses to the infliction of the injury, takes photographs, measurements, and obtains all available information considered necessary to protect the railroad company against a possible suit for damages.
>
> On the other hand, the claimant may be seriously handicapped in his attempt to procure the information necessary to the determination of the question of liability. For example, a substantial number of the railroads subject to the Employers' Liability Act have promulgated rules which prohibit employees from giving information concerning an accident to anyone excepting certain specified company officials and claim agents.
>
> The purpose of the amendment under consideration is to prohibit the enforcement of such rules and permit those who have information concerning the facts and circumstances of a personal injury to give statements to the injured employee or his dependents, or to someone authorized to represent him or them.

The Conference Committee explained (H.R. Conf. Rep. No. 1463, 76th Cong., 1st Sess. 4 (1939)) that the provision makes "illegal and void any efforts to prevent railroad company employees from furnishing voluntarily information to a person in interest with reference to the facts incident to the injury or death of any railroad employee." Accordingly, Section 60 prevents railroads from "attempt[ing] to coerce an employee to prevent him from furnishing such information or to discipline or discharge him for doing so." *Ibid.*

to create * * * by implication * * * a private cause of action" such as that asserted here by respondent against the carrier. *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 575 (1979).[9] Here, as in *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 18 (1979), Congress' declaration that offending provisions are "void" is a clear manifestation of legislative intent to vest in the victims of illegal sanctions "a right to specific and limited relief in a federal court." It may be inferred that Congress "intended that the customary legal incidents of voidness would follow, including the availability of a suit for * * * an injunction * * * and for restitution." *Id.* at 19. See also *Cannon* v. *University of Chicago*, 441 U.S. 677, 689–694 (1979).

That conclusion is supported by consideration of the four factors enunciated in *Cort* v. *Ash*, 422 U.S. 66, 78 (1975). First, plaintiff is "one of the class for whose *especial* benefit the statute was enacted." Section 60 was intended to protect both the FELA plaintiff and persons having information relevant to his lawsuit, such as respondent here. See note 8, *supra*. Second, although we have found nothing in the legislative history discussing private remedies, the legislative history cited above evinces a clear intent on the part of Congress effectively to protect employees from discharge or discipline for providing relevant information to FELA plaintiffs. Thus, Congress would appear to have intended to authorize a suit for equitable relief

[9] In the courts below, it appears that all parties were in agreement that Section 60 implicitly authorizes a civil action under some circumstances. The court of appeals stated (Pet. App. 8a): "The parties agree, and the district court held, that an injunction may issue to prevent violations of §60 in an ongoing FELA case." Petitioner now appears to question the view that Section 60 affords a civil remedy. See petitioners' Reply Br. 3. Accordingly, we state briefly in the text our reasons for concluding that Congress intended to authorize a civil suit for equitable relief under Section 60.

when such a suit is necessary to carry out that purpose. Third, such an action is consistent with the legislative scheme embodied in the FELA because it facilitates the presentation of relevant evidence in suits brought under that statute.[10] Finally, it is not inappropriate to infer a cause of action based solely on federal law because insuring the full development of relevant evidence in suits brought under the FELA is a matter of paramount concern to the federal government.

3. The statutory purpose underlying Section 60 could not be achieved if civil actions brought under that Section were subordinated to the arbitration process. As previously noted, Congress intended arbitration to be the exclusive method of resolving disputes arising under existing collective bargaining agreements. See *Andrews* v. *Louisville & Nashville R.R.*, *supra*, 406 U.S. at 324-326; *Union Pacific R.R.* v. *Price*, *supra*, 360 U.S. at 616; *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R.R.*, *supra*, 353 U.S. at 33. As this Court ruled in *Andrews*, an employee may not avoid the arbitration process merely by bringing a suit in state court for wrongful discharge in violation of an employment contract. But the situation is far different when, as here, an employee is alleged to have been discharged in violation of an independent federal statute enacted for the very purpose of preventing such a sanction. In cases such as this, the controversy requires the interpretation of a federal statute, not the interpretation of a collective bargaining agreement. See *Alexander* v. *Gardner-Denver Co.*, *supra*; *Conley* v. *Gibson*, *supra*, 355 U.S. at 45.

Although the Adjustment Board may construe collective bargaining agreements to embody applicable

[10] We demonstrate below that such a remedy does not frustrate the legislative scheme embodied in the RLA.

federal law, there is no indication that Congress intended enforcement of Section 60 to be relegated to the arbitration process.[11] And in our view, that process is not an adequate remedy for persons injured by violations of Section 60. See *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 52–53, 56–58. Not only does the Adjustment Board lack experience in dealing with issues under Section 60, but, as the court of appeals pointed out (Pet. App. 10a), forcing an employee to go through the initial disciplinary process and subsequent arbitration would, by itself, infringe Section 60. Arbitration does not begin until after the employee has been disciplined. As the court of appeals explained (Pet. App. 14a): "If a railroad is allowed to discipline an employee for furnishing information to an FELA plaintiff, and the employee is required to submit to the hearing and to process his claim through arbitration before finally reaching the federal courts, the coercive effect is overwhelming." Moreover, it is not clear that meaningful judicial review would be available following arbitration. The narrow scope of judicial review under the RLA would not appear to permit a court to consider whether the Adjustment Board had properly construed and applied Section 60. *Union Pacific R.R.* v. *Sheehan*, 439 U.S. 89, 93 (1978).

4. The completion of the RLA arbitration process in this case should not prevent judicial enforcement of Section 60. See generally *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 52–54; *Franklin* v. *Southern Pacific Transportation Co.*, 593 F.2d 899,

[11] Indeed, the arbitral decision in this case, which petitioner claims is preclusive of Hendley's judicial remedies, does not even mention 45 U.S.C. 60 or Hendley's rights thereunder. The decision merely discusses Hendley's "disloyalty" without any apparent recognition that Congress has guaranteed his right to assist fellow employees in preparing for an FELA case (Pet. App. 28a–30a).

901 (9th Cir. 1979); see also *Hines* v. *Anchor Motor Freight*, 424 U.S. 554, 571–572 (1976). Respondent invoked the arbitration process only after the district court erroneously had refused to enjoin the employer's attempt to discharge him in violation of Section 60. Thus, had the district court ruled correctly in the first instance, or had it granted interim relief pending appeal, it would not have been necessary for respondent to pursue arbitration. Respondent should not be faulted for pursuing his arbitration remedy while his appeal from the district court decision was pending. First, he faced the prospect of unemployment until the appellate process was completed. Second, had he foregone the arbitration remedy until his appeal was decided, he would have risked receiving an adverse appellate decision and then being barred from pursuing arbitration due to tardiness.

Moreover, continuation of the judicial process at this stage does not constitute relitigation of the arbitration decision because this suit does not involve judicial review of that decision, but rather is an independent proceeding to enforce the requirements of a federal statute.[12] The issue before the Adjustment Board was the proper application of the collective bargaining agreement, including Rule R of the Southern Railway's operating rules (see note 2, *supra*), not the interpretation of 45 U.S.C. 60. See *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 54.

5. The decision of the court of appeals in this case does not conflict with any decision of this Court or of

[12] Setting aside the Adjustment Board's determination not to award respondent back pay does not constitute undue "interference" with the RLA statutory scheme. *Farmer* v. *United Brotherhood of Carpenters & Joiners*, 430 U.S. 290, 305 (1977). The court of appeals could not have left the Adjustment Board's decision standing because it directly conflicted with a judicial decision construing mandatory provisions of the FELA.

any other court of appeals. Petitioner's contention (Pet. 6) that *Andrews* v. *Louisville & Nashville R.R.*, *supra*, and *Farmer* v. *United Brotherhood of Carpenters & Joiners*, 430 U.S. 290 (1977), conflict with the court of appeals' decision is incorrect. *Andrews* dealt with an employee's attempt to invoke state court jurisdiction in a suit for wrongful discharge under an employment contract, in derogation of the arbitration procedures specified by the RLA for the resolution of minor contractual disputes. The employee did not allege that his discharge violated a federal statute vesting him with a right to equitable relief.[13] In *Farmer*, the issue was whether the National Labor Relations Act preempts a tort action in state court against a union and its officers to recover damages for intentional infliction of emotional distress. 430 U.S. at 292. This Court held that Congress did not intend to supplant state court jurisdiction when the tort is "unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened * * *." 430 U.S. at 305. Clearly, neither *Andrews* nor *Farmer* raises issues comparable to those in the present suit, which involves equitable enforcement of the FELA's anti-retaliation provision.

The Ninth Circuit decisions relied on by petitioner (Pet. 11–12) are also inapposite. *Magnuson* v. *Burlington Northern, Inc.*, 576 F.2d 1367 (9th Cir.), cert. denied, 439 U.S. 930 (1978), involved a discharge controversy arising from an employee's alleged negligence on the job. Under familiar principles, this controversy was relegated to the RLA arbitration process. *Rail-*

[13] The Court expressly noted in *Andrews* that "[h]ere it is conceded by all that the only source of petitioner's right not to be discharged, and therefore to treat an alleged discharge as a 'wrongful' one that entitles him to damages, is the collective-bargaining agreement between the employer and the union." 406 U.S. at 324.

way Labor Executives Association v. *Atchison, Topeka & Santa Fe Ry.*, 430 F.2d 994 (9th. Cir. 1970), cert. denied, 400 U.S. 1021 (1971), involved damage claims resulting from discontinuance of certain train services. The court of appeals found that resolution of the controversy required an analysis of the "past bargaining history, current industry practices, and the effect of [acceptance of the plaintiff's contentions] upon future bargaining in the industry as a whole." 430 F.2d at 997. The court concluded that these issues related to "the law of the shop, not the law of the land" (*Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 57), and hence were entrusted by Congress to the arbitration process under the RLA, not the federal courts. Neither of these cases considers the propriety of equitable relief in federal court for violations of 45 U.S.C. 60.

In sum, while this case presents a novel question requiring reconciliation of two federal statutes, we think the decision of the court of appeals strikes the balance intended by Congress. Since that decision does not conflict with any decision of this Court or any other court of appeals, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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